

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 84876 / December 19, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18941

In the Matter of

**ANDREW F. NICOLETTA,
BELLA INDUSTRIES LLC,
CRANBERRY ROCK
INVESTMENTS, INC., AND J.J.
NEWPORT GROUP, INC.,**

Respondents.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-AND-
DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Andrew F. Nicoletta (“Nicoletta”), Bella Industries LLC (“Bella Industries”), Cranberry Rock Investments, Inc. (“Cranberry Rock”), and J.J. Newport Group, Inc. (“J.J. Newport”) (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds¹ that:

Summary

1. This matter involves violations of Rule 105 of Regulation M under the Exchange Act by Andrew F. Nicoletta, a Florida resident, and entities he owned and controlled. Rule 105 prohibits a person from purchasing an equity security in a covered offering where that person has sold short the same security during the Rule's defined restricted period.

2. From July 1, 2013 through December 31, 2015 (the "Relevant Period"), the Respondents violated Rule 105 in connection with 116 separate offerings, in each case by selling short shares of the issuer during the Rule 105 restricted period, and then purchasing shares in those issuers' offerings.

3. During the Relevant Period, the Respondents violated Rule 105 through trading in approximately fourteen distinct accounts. Some of the accounts were in Nicoletta's own name and some of the accounts were in the name of unregistered entities—Bella Industries, Cranberry Rock, and J.J. Newport—that Nicoletta owned and controlled and through which he conducted his securities trading using his own capital. Nicoletta is responsible for all of the trading that forms the basis of the Rule 105 violations.

4. The Respondents violated Rule 105 through one of several methods. First, in 78 of the violations, Nicoletta effected short sales during the Rule 105 restricted periods. Second, in 33 of the violations, Nicoletta mismarked his restricted period sales as "long sales" when they should have been marked as short sales (hereinafter, the "mismarked long sales"). Finally, in 5 of the violations, Nicoletta effected a combination of short sales and mismarked long sales during the Rule 105 restricted periods.

5. These violations collectively resulted in ill-gotten gains to Respondents of \$643,932.

Respondents

6. **Andrew F. Nicoletta**, age 72, is a resident of Sarasota, Florida, and is a self-employed trader. He has previously worked in the financial services industry, held a Series 7 securities license from 1973 to 1990, and worked for several broker-dealers from 1972 to 1990.

7. **Bella Industries LLC** was incorporated in Rhode Island in 2009, and its principal place of business is in New York, New York. Bella Industries has never been registered with the Commission in any capacity. During the Relevant Period, Nicoletta was the sole owner and President of Bella Industries.

8. **Cranberry Rock Investments, Inc.** was incorporated in Rhode Island in 2002, and its principal place of business is in New York, New York. Cranberry Rock has never been registered

¹ The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

with the Commission in any capacity. During the Relevant Period, Nicoletta was the sole owner and President of Cranberry Rock.

9. **J.J. Newport Group, Inc.** was incorporated in Rhode Island in 2002, and its principal place of business is in New York, New York. J.J. Newport has never been registered with the Commission in any capacity. During the Relevant Period, Nicoletta was the sole owner and President of J.J. Newport.

Legal Framework

10. Rule 105 makes it unlawful for a person to purchase equity securities in certain public offerings from an underwriter, broker, or dealer participating in the offering if that person sold short the security that is the subject of the offering during the restricted period defined in the rule, absent an exception. 17 C.F.R. § 242.105; *see Short Selling in Connection with a Public Offering*, Rel. No. 34-56206, 72 Fed. Reg. 45094 (Aug. 10, 2007) (effective Oct. 9, 2007). The Rule 105 restricted period is the shorter of the period: (1) beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial filing of such registration statement or notification on Form 1-A or Form 1-E and ending with the pricing. 17 C.F.R. §§ 242.105(a)(1) and (a)(2).

11. The Commission adopted Rule 105 “to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity.” 72 Fed. Reg. 45094. Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller’s intent in effecting the short sale. *Id.*

Respondents’ Violations of Rule 105 of Regulation M

12. Nicoletta owned and controlled Bella Industries, Cranberry Rock, and JJ Newport Group, and these entities were used to trade Nicoletta’s own capital during the Relevant Period. Nicoletta employed several individuals to trade his capital through the accounts at issue. Nicoletta was in frequent contact with these individuals and had access, on at least a daily basis, to information about their trades and the profit and loss generated from their trading activities.

13. During the Relevant Period, one of Nicoletta’s primary investment strategies was to obtain the maximum allocations possible in initial public offerings as well as in follow-on and secondary offerings. Nicoletta employed multiple accounts, including in the name of Bella Industries, Cranberry Rock, and J.J. Newport, to receive allocations in connection with a particular offering.

14. From July 1, 2013 to December 31, 2015, Nicoletta, through accounts he owned and controlled, purchased offering shares in at least 116 separate offerings. In connection with these offerings, Nicoletta violated Rule 105 by:

- a. Effecting short sales during the Rule 105 restricted period in 78 of the offerings.
- b. Effecting long sales during the Rule 105 restricted period in 33 of the offerings. These sales, however, were mismarked as long sales and should have been marked as short sales.

- c. Effecting both short sales and mismarked long sales during the Rule 105 restricted period in 5 of the offerings.

15. The relevant trading took place across fourteen distinct accounts at seven different broker-dealers. Multiple accounts received shares in connection with the offerings. The mismarked long sales occurred in several accounts but were concentrated in an account in the name of J.J. Newport. Most of the short sales took place in an account in the name of Nicoletta.

16. All of the mismarked long sales were executed on the date that the relevant offerings were priced. Almost all of the short sales were executed on the date that the relevant offerings were priced.

17. As a result of these violations, Respondents received profits totaling approximately \$643,932.

18. The profits consisted of the following:

A. First, Respondents improperly profited from the difference between the proceeds from their improper restricted period short sales, and the amounts they paid for an equivalent number of shares received in the offerings of the same issuer's shares. These unlawful profits totaled \$343,141.

B. Second, in those offerings where the number of shares they received in the offerings exceeded the number of shares they sold short during the restricted period (also known as the "overage"), Respondents improperly obtained an additional benefit in that they obtained the offering shares at a discount to the market price of the issuer's shares. Respondents received benefits from their violative conduct in the form of market discounts totaling \$291,417.

C. Third, Respondents improperly benefitted in certain offerings where the offering price exceeded the price at which they had sold the stock short during the restricted period. Because they purchased their offering shares at a discount to the market price, they avoided losses in connection with these offerings in an amount that totaled \$9,374.

19. The 116 offerings in which Respondents violated Rule 105 are identified on Exhibit A to this Order.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondents cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M of the Exchange Act.

B. Respondents shall pay, jointly and severally, disgorgement of \$643,932, prejudgment interest of \$78,052, and a civil penalty of \$370,583—for a total amount of \$1,092,567—to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment is not made on the civil money penalty, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment shall be made in the following installments:

1. \$273,143 within 10 days of entry of this Order;
2. \$204,856 within 90 days of entry of this Order;
3. \$204,856 within 180 days of entry of this Order; and
4. \$204,856 within 270 days of entry of this Order; and
5. \$204,856 within 360 days of entry of this Order.

If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application.

Payments must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying the Respondents in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Fuad Rana, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree

that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondents, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondents of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary

Exhibit A

<i>Number</i>	<i>Issuer Name</i>	<i>Symbol</i>	<i>Pricing Date</i>
1	ADVENT SOFTWARE INC	ADVS	8/7/2013
2	ALLISON TRANSMISSION HOLDING	ALSN	8/6/2013
3	GLOBAL BRASS & COPPER HOLDINGS	BRSS	9/25/2013
4	BOYD GAMING CORP	BYD	8/1/2013
5	DARLING INGREDIENTS INC	DAR	12/12/2013
6	DEL FRISCO'S RESTAURANT GROUP	DFRG	12/4/2013
7	CHANNELADVISOR CORP	ECOM	11/5/2013
8	ENBRIDGE ENERGY MANAGEMENT	EEQ	9/9/2013
9	FIBROCELL SCIENCE INC	FCSC	9/25/2013
10	FLY LEASING LTD-ADR	FLY	7/11/2013
11	INTERMUNE INC	ITMN	11/5/2013
12	JARDEN CORP	JAH	9/4/2013
13	LINKEDIN CORP – A	LNKD	9/4/2013
14	LIBERTY PPTY TR SBI	LRY	8/1/2013
15	MERRIMACK PHARMACEUTICALS	MACK	7/11/2013
16	MEDICINES CO DEL	MDCO	8/13/2013
17	ENDURO ROYALTY TRUST	NDRO	9/26/2013
18	CRESTWOOD MIDSTREAM PARTNERS	CMLP	9/9/2013
19	RESTORATION HARDWARE HOLDING	RH	7/11/2013
20	SOLARCITY CORP	SCTY	10/15/2013
21	SEADRILL PARTNERS LLC	SDLP	12/3/2013
22	TRAVELCENTERS OF AMERICA LLC	TA	12/10/2013
23	TOWER INTERNATIONAL INC	TOWR	7/24/2013
24	WHITEWAVE FOODS CO	WWAV	7/17/2013
25	ZILLOW GROUP INC – A	Z	8/19/2013
26	AGIOS PHARMACEUTICALS INC	AGIO	12/10/2014
27	ASHFORD HOSPITALITY PRIME INC	AHP	1/23/2014
28	AK STEEL HOLDING CORP	AKS	9/10/2014
29	AMERIGAS PARTNERS-LP	APU	1/13/2014

30	ARAMARK COM	ARMK	12/11/2014
31	AVANIR PHARMACEUTICALS INC	AVNR	9/23/2014
32	COMMSCOPE HOLDING CO INC	COMM	3/27/2014
33	CVENT INC	CVT	1/16/2014
34	TABLEAU SOFTWARE INC-CL A	DATA	3/20/2014
35	DELEK US HOLDINGS INC	DK	5/14/2014
36	ENDURANCE INTERNATIONAL GROUP	EIGI	11/20/2014
37	FIAT CHRYSLER AUTOMOBILES NV	FCAU	12/10/2014
38	GOPRO INC-CLASS A	GPRO	11/19/2014
39	GRAMERCY PPTY TR INC	GPT	12/10/2014
40	GASTAR EXPLORATION LTD	GST	9/18/2014
41	HANNON ARMSTRONG SUSTAINABLE	HASI	4/23/2014
42	JD.COM INC-ADR	JD	12/2/2014
43	MAIN STREET CAPITAL CORP	MAIN	4/7/2014
44	NATURAL RESOURCE PARTNERS LP	NRP	10/6/2014
45	ORCHID ISLAND CAPITAL INC	ORC	3/18/2014
46	PLAINS GP HOLDINGS LP-CL A	PAGP	11/10/2014
47	PLUG POWER INC	PLUG	4/24/2014
48	PERRIGO CO PLC	PRGO	11/20/2014
49	SABRA HEALTH CARE	SBRA	9/29/2014
50	SOLAZYME INC COM	SZYM	3/26/2014
51	TESORO LOGISTICS LP	TLLP (ANDX)	10/20/2014
52	TRINET GROUP INC	TNET	9/11/2014
53	TSAKOS ENERGY NAVIGATION LTD	TNP	1/30/2014
54	TSAKOS ENERGY NAVIGATION LTD	TNP	4/23/2014
55	VEEVA SYSTEMS INC-CLASS A	VEEV	3/25/2014
56	WESTERN DIGITAL CORP	WDC	11/6/2014
57	WILLIAM LYON HOMES-CL A	WLH	3/26/2014
58	W P CAREY INC COM	WPC	9/24/2014
59	58.COM INC-ADR	WUBA	3/27/2014
60	YINGLI GREEN ENERGY HOLD-ADR	YGE	4/24/2014

61	AERCAP HOLDINGS NV	AER	6/3/2015
62	ALDER BIOPHARMACEUTICALS INC	ALDR	1/7/2015
63	ALNYLAM PHARMACEUTICALS INC	ALNY	1/20/2015
64	AMAG PHARMACEUTICALS INC	AMAG	2/25/2015
65	AMERICAN TOWER CORP	AMT	2/25/2015
66	AUSPEX PHARMACEUTICALS INC	ASPX	1/22/2015
67	ATARA BIOTHERAPEUTICS INC	ATRA	7/9/2015
68	AXALTA COATING SYSTEMS LTD	AXTA	8/11/2015
69	BLACK HILLS CORP	BKH	11/17/2015
70	CLOVIS ONCOLOGY INC	CLVS	7/8/2015
71	CATALENT INC	CTLT	6/2/2015
72	EDUCATION REALTY TRUST INC	EDR	11/2/2015
73	ENDO INTERNATIONAL PLC	ENDP	6/4/2015
74	ESPERION THERAPEUTICS INC	ESPR	3/18/2015
75	FELCOR LODGING TRUST INC	FCH	4/8/2015
76	FERRELLGAS PARTNERS-LP	FGP	6/2/2015
77	AMICUS THERAPEUTICS INC	FOLD	6/11/2015
78	FOAMIX PHARMACEUTICALS LTD	FOMX	4/14/2015
79	FIVE PRIME THERAPEUTICS INC	FPRX	1/6/2015
80	FRONTIER COMMUNICATIONS CORP	FTR	6/4/2015
81	GENESIS ENERGY L.P.	GEL	7/16/2015
82	IMS HEALTH HOLDINGS INC	IMS	5/6/2015
83	INC RESEARCH HOLDINGS INC-A	INCR	5/6/2015
84	JARDEN CORP	JAH	10/15/2015
85	KERYX BIOPHARMACEUTICALS	KERX	1/21/2015
86	KARYOPHARM THERAPEUTICS INC	KPTI	1/6/2015
87	K2M GROUP HOLDINGS INC	KTWO	2/2/2015
88	MACQUARIE INFRASTRUCTURE COR	MIC	2/25/2015
89	MEDICAL PROPERTIES TRUST INC	MPW	1/8/2015

90	MEDICAL PROPERTIES TRUST INC	MPW	8/5/2015
91	MA-COM TECHNOLOGY SOLUTIONS	MTSI	2/5/2015
92	NEUROCRINE BIOSCIENCES INC	NBIX	2/18/2015
93	NEWMONT MINING CORP	NEM	6/9/2015
94	NEXTERA ENERGY PARTNERS LP	NEP	9/10/2015
95	NEW YORK COMMUNITY BANCORP	NYCB	10/29/2015
96	OTONOMY INC	OTIC	1/22/2015
97	OVASCIENCE INC	OVAS	1/7/2015
98	PUMA BIOTECHNOLOGY INC	PBYI	1/21/2015
99	POST HOLDINGS INC	POST	1/28/2015
100	QUNAR CAYMAN ISLANDS LTD-ADR	QUNR	6/4/2015
101	RADIUS HEALTH INC	RDUS	1/22/2015
102	SUNEDISON SEMICONDUCTOR LTD	SEMI	1/13/2015
103	SMART & FINAL STORES INC	SFS	4/14/2015
104	SEATTLE GENETICS INC	SGEN	9/10/2015
105	SUMMIT MIDSTREAM PARTNERS LP	SMLP	5/7/2015
106	NEW SENIOR INVESTMENT GROUP	SNR	6/23/2015
107	SPECTRUM BRANDS HOLDINGS INC	SPB	5/13/2015
108	SPORTSMAN'S WAREHOUSE HOLDIN	SPWH	9/24/2015
109	SUMMIT MATERIALS INC -CL A	SUM	8/5/2015
110	TRIBUNE MEDIA CO – A	TRCO	4/22/2015
111	TESLA MOTORS INC	TSLA	8/13/2015
112	2U INC	TWOU	9/24/2015
113	CONTROLADORA VUELA CIA-ADR	VLRS	11/10/2015
114	VERISK ANALYTICS INC	VRSK	5/6/2015
115	WESTERN GAS EQUITY PARTNERS	WGP	6/4/2015
116	ZIOPHARM ONCOLOGY INC	ZIOP	2/3/2015